



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2017-0077; FRL-9974-51-Region 6]

#### Approval and Promulgation of Implementation Plans; Texas; Approval of Texas Motor Vehicle Rule Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions submitted by the State of Texas that affect the Texas State Implementation Plan (SIP) concerning Texas' motor vehicle air pollution rules and retail gasoline dispensing labeling requirements for El Paso. The revisions are non-substantive in nature and do not affect implementation of federal requirements.

**DATES:** This rule is effective on [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice, unless the EPA receives relevant adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If the EPA receives such comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2017-0077, at <http://www.regulations.gov> or via email to [walser.john@epa.gov](mailto:walser.john@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not

submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Mr. John Walser, 214-665-7128, [walser.john@epa.gov](mailto:walser.john@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Mr. John Walser, 214-665-7128, [walser.john@epa.gov](mailto:walser.john@epa.gov). To inspect the hard copy materials, please schedule an appointment with Mr. Bill Deese at 214-665-7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” and “our” means the EPA.

## **I. Background**

Section 110 of the CAA requires states to develop and submit to the EPA a SIP to ensure that state air quality meets National Ambient Air Quality Standards. These ambient standards

currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. The EPA approved SIP regulations and control strategies are federally enforceable.

## **II. The SIP Submittals and EPA's Evaluation**

On July 12, 1995, the Texas Commission on Environmental Quality (TCEQ) submitted SIP revisions to EPA that amend 30 Texas Administrative Code (TAC) Chapter 114.13 (renumbered to 114.100)<sup>1</sup> which include minor rephrasing regarding gasoline pump dispensing labeling dates. Specifically, the revisions modify §114.100(f)(1) and (2) to indicate when the legible labels shall be displayed. See Docket EPA-R06-OAR-2017-0077 online at [www.regulations.gov](http://www.regulations.gov) for the submittal and adopted rules published in the Texas Register (20 TexReg 3097, April 25, 1995). EPA is approving these minor changes submitted to EPA on July 12, 1995. Note, it was discovered in the processing of the 2017 SIP revision discussed below that EPA had inadvertently never processed the 1995 revision.

On January 20, 2017, TCEQ submitted SIP revisions to EPA that amend 30 TAC Chapter Section 114.100 and 114.305 that make non-substantive, minor modifications to the following Sections: §114.100 (b), (c), (d), (e)(1), (e)(2), (f) and 114.305(a) and (c). For example, §114.100(c) changes the date “September 1” to “September 1<sup>st</sup>.” The revision to §114.100(d) includes replacing the phrase “commission, EPA” with “executive director, United States Environmental Protection Agency (EPA).” The revision to §114.100(e)(2) adds the words “the active version” to the beginning of the phrase “American Society for Testing and Materials (ASTM)” to ensure that the most active ASTM version is used for determining the oxygen

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<sup>1</sup> See, 63 FR 35839 (July 1, 1998)

content of fuel.<sup>2</sup> Revisions to §114.305(a) ensure that the most active current version of the ASTM Test Method for determining compliance with the Reid Vapor Pressure (RVP) limits is required consistent with industry's current testing practices and state and federal law.<sup>3</sup> We have prepared a TSD for this action which details our evaluation. The TSD may be accessed on-line at [www.regulations.gov](http://www.regulations.gov), Docket No. EPA-R06-OAR-2017-0077.

Section 211(m) of the Act requires that various States submit revisions to their SIPs, and implement oxygenated gasoline programs by no later than November 1, 1992. EPA previously approved the State's adopted labeling regulations, enforcement procedures, and oxygenate test methods in conformity with Federal regulations (*See*, 59 FR 15683 (April 4, 1994)). The labeling regulations of retail gasoline pumps also may be found at 40 CFR 80.35.<sup>4</sup> Texas has complied with federal requirements and the above revisions function to add further clarity to the existing rule language and are approvable.

### **III. Final Action**

Pursuant to Sections 110 and 182 of the Act, EPA is approving, through a direct final action, revisions to the Texas SIP that were submitted on July 12, 1995 and January 20, 2017. We are approving revisions to the following sections within Chapter 114 of 30 TAC: 114.100 and 114.305. We evaluated the state's submittals and determined that they meet the applicable requirements of the CAA. Also, in accordance with CAA section 110(l), the revisions will not interfere with attainment of the NAAQS, reasonable further progress, or any other applicable requirement of the CAA.

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<sup>2</sup> The most active current ASTM Test Method is ASTM D4815.

<sup>3</sup> Volatility is the property of a liquid fuel that defines its evaporation characteristics. RVP is an abbreviation for "Reid Vapor Pressure", a common measure of and the generic term for gasoline volatility. The most active current version of the test for gasoline volatility is the ASTM Test Method D5191.

<sup>4</sup> See "Notice of Final Oxygenated Fuels Labeling Regulations under Section 211(m) of the CAA as Amended – Notice of Final Rulemaking." (*See*, 57 FR 47769 (October 20, 1992))

The EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice unless we receive relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### **IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the revisions to the Texas regulations as described in the Final Action section above. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 6 Office (please contact Mr. John Walser for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under

sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation (62 FR 27968, May 22, 1997).

## **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 22, 2018.

**Anne Idsal,**  
*Regional Administrator, Region 6.*



40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart SS – Texas**

2. In § 52.2270(c), the table entitled “EPA Approved Regulations in the Texas SIP” is amended by adding a centered heading for “Subchapter D – Oxygen Requirements for Gasoline” under Chapter 114, followed by a new entry for Section 114.100; and revising the entry for Section 114.305.

The additions and revisions read as follows:

**§ 52.2270 Identification of plan.**

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(c) \* \* \*

**EPA APPROVED REGULATIONS IN THE TEXAS SIP**

State citation	Title/Subject	State approval/ Submittal date	EPA approval date	Explanation
* * * * *				
Chapter 114 (Reg 4)—Control of Air Pollution from Motor Vehicles				
* * * * *				
Subchapter D – Oxygen Requirements for Gasoline				
Section 114.100	Oxygenated Fuels	1/20/2017	[Insert date of Publication in the Federal Register], [Insert Federal Register citation]	
* * * * *				
Subchapter H-Low Emission Fuels				
Division 1: Gasoline Volatility				
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Section 114.305	Approved Test Methods	1/20/2017	<b>[Insert date of Publication in the Federal Register] [Insert Federal Register citation]</b>	
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[FR Doc. 2018-03974 Filed: 2/26/2018 8:45 am; Publication Date: 2/27/2018]